Supreme Court, U.S.
FILED
AUG 4 - 2003
OFFICE OF THE CLERK

No. 03-31

IN THE

Supreme Court of the United States

MICHAEL McNEILL,

Petitioner,

v.

TOWN OF PARADISE VALLEY, an Arizona town; ELSA LYNCH, a judge in the Paradise Valley Municipal Court; MIKE COPPOLA, a Paradise Valley police officer; JILL KENNEDY, Town Attorney for Paradise Valley; SHERWOOD JOHNSTON, hearing officer of Paradise Valley,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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TABLE OF CONTENTS

	Page
Table Of Cited Authorities	iii
The Court Of Appeals' Decision Does Not Warrant This Court's Review	1
Statement Of The Case	2
A. Paradise Valley's Photo Radar System	2
B. Petitioner's Photo Radar Citation	3
C. Proceedings in Paradise Valley Municipal Court	4
Reasons For Denying The Petition	6
I. Paradise Valley's Photo Radar System Comports With All Constitutional Requirements.	6
II. Paradise Valley Did Not Violate Any Of Petitioner's Constitutional Rights.	8
A. Petitioner Has Not Demonstrated a Fourteenth Amendment Violation.	8
B. The Petitioner's Fourth Amendment Theory Is Without Basis.	11
C. Petitioner's Thirteenth Amendment/ Involuntary Servitude Claim Does Not Withstand Scrutiny.	13

Contents

Page

III. Respondents Lynch, Johnston, And Kennedy Are Immune From Suit. 14

IV. Petitioner's Request For Summary Judgment Is Not Properly Before This Court. 16

Conclusion 17

TABLE OF CITED AUTHORITIES

Page

Cases

Anderson v. Creighton, 483 U.S. 635 (1987) 14

Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986) 15, 16

Berkemer v. McCarty, 468 U.S. 420 (1984) 12

Brower v. County of Inyo, 489 U.S. 593 (1989) 11

City of Canton v. Harris, 489 U.S. 378 (1989) 9

City of Portland v. Kirk, 518, P.2d 665 (Ore. App. 1974) 7

City of Seattle v. Stone, 410 P.2d 583 (Wash. 1966) 7

Easy Rider's Freedom F.I.G.H.T. v. Hannigan, 92 F.3d 1486 (9th Cir. 1996) 11

Franceschi v. Schwartz, 56 F.3d 828 (9th Cir. 1995) 15

Harlow v. Fitzgerald, 457 U.S. 800 (1982) 14

Imbler v. Pachtman, 424 U.S. 409 (1976) 16

Cited Authorities

Page

In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984, 674 P.2d 836 (Ariz. 1983) 12

Knowles v. Iowa, 525 U.S. 113 (1998) 12

Miller v. Reed, 176 F. 3d 1202 (9th Cir. 1999) 10

Monell v. Department of Social Service of New York, 436 U.S. 658 (1978) 9, 13

Romer v. Evans, 517 U.S. 620 (1996) 10

Rucker v. Davis, 237 F. 3d 1113 (9th Cir. 2001) 7

State v. Boudette, 791 P.2d 1063 (Ariz. 1990) 12

State v. Dean, 543 P.2d 425 (Ariz. 1975) 11, 12

State v. Ochoa, 544 P.2d 1097 (Ariz. 1976) 11, 12

Stump v. Sparkman, 435 U.S. 349 (1978) 15

Terry v. Ohio, 392 U.S. 1 (1968) 12

Cited Authorities

Page

United States Constitution

Fourth Amendment 11, 12

Fifth Amendment 13

Eighth Amendment 13

Thirteenth Amendment 13

Fourteenth Amendment 10, 13

Statutes and Regulations

42 U.S.C. § 1983 ..... 2, 7, 9, 13, 16

A.R.S. § 13-3881(A) 11

A.R.S. § 28-1062 6

A.R.S. § 28-1552(B) 15

A.R.S. § 28-1561 ..... 6, 7

Rules

U.S. Sup. Ct. R. 10(c) 2

Paradise Valley Town Code

Paradise Valley Town Code, § 11-2-18 ..... 6, 7

THE COURT OF APPEALS' DECISION DOES NOT WARRANT THIS COURT'S REVIEW

Petitioner presents absolutely no compelling reason for this Court to review the Ninth Circuit Court of Appeals' decision in this matter. Petitioner's shotgun presentation of stream of consciousness, rhetoric-laced arguments fail to identify any constitutional deprivations sufficient to support a claim under 42 U.S.C. § 1983. Instead, Petitioner's brief is a regurgitation of the conclusory allegations made throughout the litigation below, and fails to identify any conflict with existing federal law or any important federal or national interest which deserves this Court's attention.

At the heart of this matter is a photo radar speeding citation issued by the Respondent Town of Paradise Valley (hereinafter "Paradise Valley") to Petitioner, as the registered owner of a vehicle which was caught speeding on Paradise Valley's roadways. (IR 134, ¶ 13; Exhibit B).[1] Once it was determined that Petitioner was not the driver of the speeding vehicle at the time of the violation, the citation was dismissed. (IR 129, Exhibit A, Doc. No. 000108). Petitioner's claim that the citation was not issued in accordance with Arizona Statute forms the basic premise for all allegations of wrongful conduct. Even beyond the fact that this premise is legally and factually wrong, both the District Court and the Ninth Circuit Court of Appeals correctly found that Petitioner's constitutional rights were in no way violated through this process.

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1. All references to "IR" are references to the Index of Record on Appeal to the Ninth Circuit. The number following the IR designation corresponds to the docket entry number of the index.

It is extremely doubtful that this type of controversy will arise again, and it is undoubtedly the uniqueness of the circumstances presented that contributed to the Ninth Circuit's decision not to publish its ruling, and to instead issue a short, but correct memorandum decision summarily rejecting Petitioner's conclusory allegations. As a result, the Ninth Circuit's ruling will have no effect whatsoever on the body of law governing § 1983 claims. Instead, the only effect of the decision is to correctly decide the case before it. Petitioner has simply failed to raise "an important question of federal law," and Petitioner's Writ should be denied. *See* Rules of the Supreme Court of the United States, Rule 10(c).

In short, Petitioner has made a "federal case" out of nothing more than a properly issued speeding ticket; a ticket which was eventually dismissed! The Ninth Circuit's ruling was proper in all respects and Respondents respectfully request this Court to deny the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

Because Petitioner fails to provide the Court with most of the pertinent facts underlying this case, Respondents will briefly do so.

A. Paradise Valley's Photo Radar System

As an important means of traffic enforcement, the Town of Paradise Valley uses an Auto Patrol (Tm) Speed Camera Unit to detect and memorialize drivers of vehicles speeding on Paradise Valley's roadways. (IR 102, Exhibit A). Speed camera units operated by Paradise Valley police officers are stationed at various locations on roadways in Paradise Valley.

(*Id.*) When the photo radar unit detects a speeding vehicle, a photograph is taken of the driver of the vehicle, and a second photograph is taken of the rear of the vehicle, capturing the license plate. (*Id.* IR 134, Exhibit A, ¶ 9).

After processing the data and photographs, the information regarding the registered owner of the speeding vehicle is obtained from motor vehicle records. (IR 102, Exhibit A; IR 134, ¶ 11). With a list of offending drivers, the officer then causes a speeding citation to be issued to the registered owner of the vehicle. (IR 102, Exhibit A). Since Paradise Valley began using this photo radar system in 1987, the number of accidents has been cut in half, all the while the population of the town has steadily increased. (IR 102, Exhibits A, B, C).

B. Petitioner's Photo Radar Citation

Respondent Mike Coppola, a Paradise Valley police officer trained to operate the photo radar system, deployed the photo radar system to East McDonald Drive in Paradise Valley on August 19, 1997. (IR 134, Exhibit A, ¶ 2-4). Before, during, and after the deployment, Officer Coppola tested and monitored the unit to ensure that it worked properly, which it did. (*Id.*, ¶ 6-8).

It is undisputed that on August 19, 1997, Petitioner's vehicle, a 1985 Ford Pickup truck with license plate number 4WN956, was detected as going 53 miles per hour in a 40 mile per hour zone. (IR 134, ¶ 13). After the deployment was completed on August 19, 1997, the photograph of Petitioner's vehicle was developed and Officer Coppola received a printout identifying Petitioner as the registered owner of that vehicle. (IR 144, Exhibit 2, ¶ 14). Because

Officer Coppola had tested and monitored the photo radar unit, and in light of receiving a printout of vehicles that were in violation of the speed laws, Officer Coppola executed a certification which states that he had reasonable grounds to believe that each of the registered owners of the vehicles listed on the printout, including Petitioner, were in violation of Paradise Valley's speed laws. (IR 134, Exhibit A, ¶ 12-13).

Once Officer Coppola executed the certification, that certification and the printout of the vehicles in violation were used to issue traffic citations. These traffic citations were then mailed to the registered owners of the vehicles detected as being in violation. (*Id.*, ¶ 16.) In light of Officer Coppola's certification, and in light of the fact that Petitioner's vehicle was listed on the printout as speeding, a photo radar traffic citation was issued to Petitioner's Arizona address. (IR 134, Exhibit B; IR 144, Exhibit 2, ¶ 14). Paradise Valley's practice of utilizing a police officer's written certification as a basis for issuing computer generated traffic citations was expressly approved by the Arizona Supreme Court long before Petitioner was ever issued his photo radar citation. (IR 112, Exhibit A, Doc. Nos. 197-199).

C. Proceedings in Paradise Valley Municipal Court

After Petitioner received the photo radar citation, Petitioner filed a motion in Paradise Valley Municipal Court on October 3, 1997, requesting that a "plea of not guilty" be entered on his behalf with respect to the citation, and he also asked that the citation be dismissed. (IR 129, Exhibit A, Doc. No. 000129). On October 14, 1997, Respondent Hearing Officer Johnston issued its order denying Petitioner's motion to dismiss. (*Id.*, Doc. No. 000126-127). Because the photo radar citation at issue was simply a civil traffic violation,

and not a criminal violation, Hearing Officer Johnston modified Petitioner's plea of "not guilty" and entered a plea of "not responsible." (*Id.*) Because of this plea, the matter was set for hearing on December 18, 1997. (*Id.*)

As that date approached, Petitioner filed a motion to continue. (*Id.* at Doc. No. 000119). Petitioner's request for continuance was granted in part, in that he was given the maximum allowed continuance of sixty days. (*Id.* at Doc. No. 000118). However, it was not necessary for Petitioner to appear in person at the hearing, as the backside of the citation delineated four separate options for responding to the citation, three of which did not entail a personal appearance. (*Id.*, Doc. No. 000104). Of particular relevance here, Option 4 on the citation provided that if the cited person was not the driver of the vehicle, the identity of the driver could be identified on the citation and simply mailed to Paradise Valley. (*Id.*)

However, Petitioner chose to personally appear at the municipal court, and filed a second motion to dismiss on February 23, 1998. (*Id.*, Doc. No. 000109-112). Apparently, once Petitioner personally appeared at the municipal court it became clear from the photograph of the driver accompanying the citation that Petitioner was not the driver of the vehicle. Therefore, an attorney for Paradise Valley moved to dismiss the citation for the stated reason that Petitioner ". . . is not the driver of the vehicle." (*Id.*, Doc. No. 000108). Respondent Judge Elsa Lynch executed the order dismissing the complaint on that same date. (*Id.*)

Once the actual facts are considered, the correctness of the Ninth Circuit's decision becomes clear, as does the fact the Ninth Circuit's determination does not warrant further review.

REASONS FOR DENYING THE PETITION

I. Paradise Valley's Photo Radar System Comports With All Constitutional Requirements.

Petitioner is factually and legally incorrect in his assertion that Paradise Valley's Town Code operated to violate some constitutional right. To begin with, Petitioner's suggestion that Paradise Valley Town Code § 11-2-18, is in circumvention of A.R.S. § 28-1561[2] is simply a matter of interpreting two laws of the state of Arizona. This is hardly a compelling federal or national interest which deserves this Court's attention. This is especially true given the fact that the Arizona Supreme Court has **expressly approved** Paradise Valley's system and procedure for issuing photo radar traffic citations. (IR 112, Exhibit A, Doc. Nos. 197-199).

Moreover, there is no conflict between A.R.S. § 28-1561 and Paradise Valley's Town Code. A.R.S. § 28-1561 simply requires that the traffic citation be certified. Petitioner asks this Court to ignore the fact that Respondent Police Officer Mike Coppola did certify, after receiving a computer printout identifying all the registered owners of the vehicles that had been detected as speeding, that he had reasonable grounds to believe that the registered owners had committed an act contrary to law. (IR 134, Exhibit A, ¶ 12-15). As the District Court found, Officer Coppola's certification was incorporated into the traffic citation at the ninth line of the citation. (IR 148, p. 7, l. 1-2; IR 134, Exhibit B).

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2. This is the current version of the former A.R.S. § 28-1062 erroneously cited by Petitioner.

The certification by Respondent Police Officer Coppola that the registered owner was the driver of the speeding vehicle is premised on Paradise Valley Town Code § 11-2-18(a), in which it states that ". . . the proof of identity of the person in whose name the vehicle is registered . . . may be sufficient evidence that such person was responsible for such violation. . . ." (IR 101, p. 14). This presumption that the registered owner was the driver of the vehicle in no way conflicts with A.R.S. § 28-1561. More specifically, for purposes of an analysis under § 1983, this presumption is constitutionally permissible, especially given the fact that the traffic citation to Petitioner was civil in nature. *See City of Portland v. Kirk*, 518, P.2d 665, 667-68 (Ore. App. 1974) (approving a rebuttal presumption that the registered owner of a vehicle is the person who parked the vehicle); *City of Seattle v. Stone*, 410 P.2d 583, 585 (Wash. 1966) (approving a rebuttal presumption that the registered owner of the vehicle is responsible for parking it illegally). *See also Rucker v. Davis*, 237 F. 3d 1113, 1127 (9th Cir. 2001) (approving a rebuttal presumption that a tenant controls activities within his apartment and that if the presumption is not rebutted he may be evicted for allowing unlawful activities).

Petitioner does nothing to explain how Paradise Valley's photo radar system and the presumption that the registered owner was the driver of the vehicle falls below constitutional standards and resulted in a deprivation of Petitioner's constitutional rights. By failing to do so, Petitioner has failed to present any cogent reason, let alone a compelling reason, for this Court to accept review.

II. Paradise Valley Did Not Violate Any Of Petitioner's Constitutional Rights.

In Petitioner's laundry list of claimed constitutional violations, Petitioner simply repeats the conclusory allegations of constitutional violations that he has made throughout this litigation. Petitioner does not claim that the Ninth Circuit applied an incorrect rule of law, nor does Petitioner claim that the Ninth Circuit decision in this matter conflicts with some other established precedent. Rather, Petitioner seems to suggest that the Ninth Circuit applied the correct standard of law, but simply misapplied the facts to that law. This does not warrant review.

Even if Petitioner's individual arguments are considered, as the Ninth Circuit noted, "they lack merit." (*See* Pet., App. V, p. 2).

A. Petitioner Has Not Demonstrated a Fourteenth Amendment Violation.

Although it is unclear, it appears that Petitioner claims to have been denied due process at his hearing in Paradise Valley Municipal Court and lists five specific items. (Pet., p. 8). However, there is no legal or common sense support for Petitioner's claim that he was denied his due process rights. Even if Petitioner did not get the opportunity to speak or argue his own motion to dismiss, it is beyond the pale of § 1983, as well as logic and common sense, to say that Petitioner was denied a fair hearing and suffered a constitutional deprivation, when all that occurred was that the traffic citation was summarily dismissed because the prosecutor realized Petitioner was not the driver

photographed in the speeding vehicle. (IR 129, Exhibit A, Doc. No. 000108). It is for this reason that the Ninth Circuit found that Petitioner "received all the process he was due." (Pet. App. V, p. 2).

Further, as this Court has made clear, in order to succeed on his § 1983 claim against Paradise Valley, Petitioner must meet the stringent burden of showing that Paradise Valley had an official policy or custom that directly resulted in a constitutional deprivation to Petitioner. *See Monell v. Department of Social Service of New York*, 436 U.S. 658, 690-91 (1978); *City of Canton v. Harris*, 489 U.S. 378, 387 (1989). Liability cannot attach to Paradise Valley simply because it employs an individual who allegedly committed a constitutional tort. *See Monell*, 436 U.S. at 691-94. Even if Petitioner's criticisms of the conduct of Respondent Municipal Court Judge Elsa Lynch were to be considered constitutional violations,[3] Petitioner has failed to demonstrate that these alleged constitutional deprivations resulted from an established municipal policy or custom, as opposed to a single, instant act by a singular Paradise Valley employee. Therefore, Petitioner's Writ to this Court is facially insufficient.

Equally insufficient is Petitioner's equal protection claim. To sustain such a claim against Paradise Valley, Petitioner must prove: (1) there is disparate treatment; (2) there is a burden on a fundamental right or targeting of a suspect class; and (3) there is no rational relation to some

3. Respondent Lynch, as will be explained in more detail below, has absolute immunity from Petitioner's constitutional claims against her.

legitimate end. *See Romer v. Evans*, 517 U.S. 620, 631 (1996). There simply is no disparate treatment as Paradise Valley issues its photo radar speeding citations in the same way to every person that is detected to be in violation of the speed laws, all in accordance with the express permission of Arizona's Supreme Court. The only "disparate treatment" is between vehicles that are traveling in excess of the speed laws and those that are not. However, this cannot support an equal protection claim.

Furthermore, there is no suggestion that Paradise Valley's photo radar system targets a suspect class. In addition, there is no fundamental right to drive on public highways, and there is no fundamental right to drive on these roadways in excess of the speed limit. *See Miller v. Reed*, 176 F. 3d 1202, 1206 (9th Cir. 1999).

Finally, as the District Court noted, Paradise Valley's photo radar system bears a rational relation to a legitimate end. (IR 127, p. 17). Upon implementation of the photo radar system in Paradise Valley, the number of traffic accidents dropped dramatically. (IR 102, Exhibit B). Since then, the rate of accidents has stayed relatively the same despite an ever increasing population in Paradise Valley. (*Id.*, Exhibits B, C.). The inference to be drawn from these statistics is that implementation of the photo radar system has helped reduce the rate of accidents. (IR 127, p. 17).

Simply put, Petitioner has no Fourteenth Amendment claim.

B. The Petitioner's Fourth Amendment Theory Is Without Basis.

Although equally as vague as his other claims of constitutional deprivation, Petitioner seems to suggest that his Fourth Amendment rights were violated because Paradise Valley's citation amounted to an "arrest," and was done so without probable cause. However, the issuance of a civil traffic complaint does not in any way amount to an arrest under Arizona law, because there is no physical restraint or submission to custody of a police officer. *See* A.R.S. § 13-3881(A). Moreover, there was no "seizure" under the Fourth Amendment because there was no intentional acquisition of physical control over Petitioner. *See Brower v. County of Inyo*, 489 U.S. 593, 596 (1989). It simply cannot be said that the issuance of a photo radar citation in any way amounts to a "seizure" because the person cited is never stopped or detained for any length of time, but is merely recorded photographically as committing the violation and is subsequently issued a citation in the mail. (IR 102, Exhibit A).

Even beyond the fact that a vehicle is never "stopped" when issued a photo radar citation, Arizona only requires that the issuance of a civil traffic citation be based on reasonable suspicion and there need not be a showing of probable cause. *See State v. Ochoa*, 544 P.2d 1097, 1099-1100 (Ariz. 1976); *State v. Dean*, 543 P.2d 425, 426-27 (Ariz. 1975).[4] In other words, a traffic stop is permissible in

4. Federal courts have a generally given deference to a State's determination as to the standard of suspicion necessary to support issuing a citation. *See, e.g., Easy Rider's Freedom F.I.G.H.T. v. Hannigan*, 92 F.3d 1486, 1498 (9th Cir. 1996).

Arizona if it comports with the standards of this Court as established in *Terry v. Ohio*, 392 U.S. 1 (1968), i.e., a *Terry* stop may be based upon "a reasonable suspicion" and need not meet the higher standard of probable cause. *See Ochoa*, 544 P.2d at 110. *See also State v. Dean*, 543 P.2d 425, 427 (Ariz. 1975) (a founded suspicion is all that is necessary for making a traffic stop); *State v. Boudette*, 791 P.2d 1063, 1067 (Ariz. 1990).[5] In fact, because the critical inquiry here is whether the constitutional standard has been met, this Court has made it clear that a traffic stop is constitutionally permissible when based on a "reasonable suspicion." *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984); *Knowles v. Iowa*, 525 U.S. 113, 118 (1998). That standard was met here, and Petitioner does not claim otherwise. Therefore, there was no Fourth Amendment violation.

The only remaining aspect of Petitioner's Fourth Amendment claim, as far are Respondents can discern, is his allegation that he was "surrounded" by police officers at the Paradise Valley Municipal Court Clerk's Office window and that he was "in fear of his life." (Pet., p. 16). Notwithstanding the doubtful nature of this alleged constitutional violation, Petitioner did not advance below,

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5. Petitioner cites to the case of *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 674 P.2d 836 (Ariz. 1983) for the proposition that reasonable grounds/founded suspicion equates to probable cause. However, in that case the Arizona Supreme Court only decided the issue of what **standard of proof** was to be applied to the "reasonable grounds" standard. The Arizona Supreme Court did not in any way hold that the "probable cause" and "reasonable grounds to believe" standards were equivalent. Rather, the Arizona Supreme Court merely held that in the particular context of a juvenile transfer action, the preponderance of the evidence burden would be applied to both standards. *Id.* at 837-38.

and has not advanced here, any competent facts to support the requisite finding that Paradise Valley had a policy or custom for such conduct. This is fatal to Petitioner's claim. *See Monell*, 436 U.S. at 691.[6]

C. Petitioner's Thirteenth Amendment/Involuntary Servitude Claim Does Not Withstand Scrutiny.

Regarding this aspect of Petitioner's Writ, Petitioner does not provide any explanation as to how the Ninth Circuit improperly decided a question of law or issued a decision in conflict with other law. Moreover, Petitioner does not cite to any legal authority indicating that some alleged violation of the Thirteenth Amendment can form a basis for a § 1983 claim. Petitioner's conclusory allegations that he suffered a constitutional deprivation, without any analysis, fails to present an issue for this Court to review.

Finally, as with the theories advanced above, there is a complete absence of any evidence that Paradise Valley had some established policy or custom compelling individuals to appear and identify the actual driver of the speeding vehicle in contravention to the Thirteenth Amendment. *See Monell*, 436 U.S. at 690-91. In fact, the evidence actually dictates that Paradise Valley did not have any such policy or custom.

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6. Petitioner also suggests that this conduct was in violation of his Fifth, Eighth, and Fourteenth Amendment rights. However, Petitioner cites this Court to no legal authority whatsoever setting the standards for determining when a cognizable deprivation can be said to have occurred, let alone any analysis or evidence as to how his undefined rights were violated. In any event, Petitioner's argument fails because he has failed to establish the requisite element under *Monell, supra*, of an established municipal policy or custom.

On the face of the citation, itself, the person cited is given four options for resolving the citation:

1. Pay the fine or sanction in person or by mail;

2. Attend traffic safety class;

3. Appear in person to contest the violations; or

4. **If the registered owner was not the driver, identify the driver on the written citation and return by mail to Paradise Valley.**

(IR 134, Exhibit B). In light of this, the actual policy or custom of Paradise Valley is to have the identification of the actual driver be done by mail, and no appearance is necessary. Petitioner chose to ignore Option 4, but this hardly raises a constitutional issue. As such, Petitioner's claims can be summarily rejected.

III. Respondents Lynch, Johnston, And Kennedy Are Immune From Suit.[7]

With respect to Respondents Lynch and Johnston, Petitioner's argument is premised on his assumption that the

7. Petitioner does not ask this Court to determine whether Respondent Police Officer Mike Coppola was entitled to qualified immunity. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Anderson v. Creighton*, 483 U.S. 635, 638-39 (1987) (a police officer should prevail on an assertion of qualified immunity if a reasonable police officer possessing the same information could have believed his conduct was lawful). This is because he cannot. Petitioner's claims against Respondent Coppola were dismissed with **Petitioner's agreement**. (IR 74). Therefore, Respondents need not address the immunity issue with respect to Respondent Coppola.

photo radar citation was constitutionally invalid. However, as discussed above, this is not true. Therefore, Petitioner's immunity argument fails on its face.

Independently, Petitioner refuses to acknowledge the fact that he must show a complete absence of **any** jurisdiction whatsoever before immunity will be denied to judges and judicial officers. *See Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). If a Court had subject matter jurisdiction over an issue, then any challenged actions taken in relation to that matter fall within the grant of immunity. *Id.* at 356. Regardless of whether or not the photo radar citation issued to Petitioner turned out to be valid, the simple fact remains that the Paradise Valley Municipal Court was vested with subject matter jurisdiction over such a speeding citation. *See* A.R.S. § 28-1552(B) ("municipal courts and justice courts have concurrent jurisdiction over civil traffic violations committed within their boundaries. . . .") Because jurisdiction irrefutably exists, immunity attaches and precludes Petitioner's claims against Respondents Lynch and Johnston. *See Franceschi v. Schwartz*, 56 F.3d 828, 831 (9th Cir. 1995) (immunity still applies when judge acts in excess of jurisdiction, as opposed to in clear absence of jurisdiction."); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) ("judges and those performing judge-like functions are absolutely free from liability for damages for acts performed in their official capacities").

As for Respondent Kennedy, the City Prosecutor, Petitioner fails to explain why prosecutorial immunity should not attach for Respondent Kennedy's alleged act of causing a witness subpoena to be issued. This is an act intimately associated with the judicial phase of the process and is a

function which entitles Respondent Kennedy to absolute immunity from a civil suit for damages under § 1983. *See Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976); *Ashelman*, 793 F.2d at 1075. Petitioner's own allegations make clear the correctness of affording Respondent Kennedy absolute immunity.

IV. Petitioner's Request For Summary Judgment Is Not Properly Before This Court.

Before the Ninth Circuit, Petitioner did not present the issue of whether or not he should be granted summary judgment on his claims. Therefore, that issue is not properly before this Court. Regardless, as the above discussion dictates, the District Court properly granted Respondents' summary judgment and the Ninth Circuit correctly affirmed that determination. Therefore, Petitioner's argument fails on its merits as well.

CONCLUSION

Petitioner has not suffered any constitutional deprivation whatsoever. Paradise Valley's photo radar system comports with constitutional standards in all respects, and Petitioner has not demonstrated otherwise. The District Court properly found that the individual Respondents were entitled to immunity, and properly granted summary judgment to Paradise Valley. The Ninth Circuit correctly affirmed these determinations and Petitioner has not presented any compelling reason for this Court to review that determination. Therefore, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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